

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8884 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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RAJU @ RAJU GENDI RUPCHAND KRISHNANI SINDHI

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for Petitioner

Mr.Uday Bhatt, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 21/11/2000

ORAL JUDGEMENT

#. This petition is filed by the petitioner under Article 226 of the Constitution of India challenging the order of detention dated 13.7.200 passed by the Police Commissioner, Ahmedabad City, Ahmedabad against the

petitioner in exercise of the powers under section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (hereinafter referred to as the PASA Act). The detention order came to be served upon the petitioner on 14.7.2000. The grounds of detention along with other papers were supplied to the petitioner at the time of service of the detention order of the petitioner.

#. The grounds of detention are placed on record of this petition which reveals that a crime no.1352 of 2000 was registered against the petitioner under sections 66(1)(b), 65(a) and (e), 81,83 and 116(1)(b) on 9.7.2000 before the Prohibition Police Station, North Zone, Ahmedabad. The concerned detaining authority took into consideration the investigation of the above said crime against the petitioner and the statements of two witnesses whose stated before the police on assurance of anonymity that the petitioner was dealing with illegal liquor and anti social activity. On opposing of the petitioner, the witnesses were beaten by the petitioner. From the above materials the detaining authority reached to a subjective satisfaction that the petitioner was a bootlegger within the meaning of section 2(B) of the Bombay Prohibition Act and due to fear of the petitioner, nobody comes forward to give evidence or to file complaint. The detaining authority considered that selling and distributing illegal liquor affects prejudicially the public health and public order in the society. The detaining authority also considered the remedy to take action under section 93 of the Bombay Prohibition Act was not sufficient remedy to prevent the illegal activities of the petitioner forthwith. The detaining authority also considered that though the petitioner was in judicial custody at the time of passing of the order but on preferring bail application the petitioner was likely to be released on bail and likely to continue his illegal activities. So the detaining authority considered that cancellation of bail was also not the remedy sufficient to prevent the activities of the petitioner and hence after reaching subjective satisfaction the impugned order was passed by the detaining authority on 13.7.2000.

#. The order impugned came to be challenged by the petitioner on various grounds. Considering the rival contentions and scrutinising the grounds raised by the petitioner, it appears that the petition can be disposed of on the ground of non application of mind by the detaining authority alone. It is now established law that firstly the detaining authority is required to take

into consideration lesser drastic remedy available to the detaining authority. If this is not done, then the same is non application of mind so as to vitiate the detention order. In Zubedabibi Rasidkhan Pathan vs.State of Gujarat reported in 1995(2) GLR 1134. the Division Bench of this Court observed that the detaining authority must apply its mind qua the facts of the case. The Division Bench ruled that non consideration of cancelling of the bail under section 437(5) of Cr.P.C. would amount to non application of mind. This view is again endorsed by the Division Bench of this Court in LPA No.1056 of 1999 in the case of Yunusbhai Hasanbhai Ghanchi vs.District Magistrate.

#. In this case, non application of mind by the detaining authority vitiating the detention order is two fold. Firstly, the detaining authority unnecessarily presumed that though the petitioner was in judicial custody was likely to be released on bail. Secondly the detaining authority unnecessarily anticipated that by matter of course, he was likely to be released on bail by the court and to continue his illegal activity. It is an admitted fact that the petitioner was in judicial custody and the order was served upon him. In the circumstances, a duty is cast upon the detaining authority to consider whether the detention order under the PASA Act was at all required to be passed in view of the fact that the petitioner being in judicial custody and the possibility of his continuing in dealing with illegal liquor. The detaining authority or the State at the time of releasing the petitioner on bail could have opposed the bail application on the grounds mentioned in the detention order. Instead, the detaining authority presumed that if the petitioner would be released on bail, he would continue his illegal activities. This is non application of mind by the detaining authority vitiating the detention order. The detention order impugned is required to be set aside on this ground alone and therefore, the other grounds raised by the petitioner are not considered necessary to be dealt with.

#. In view of the above discussion the detention order dated 13.7.2000 passed by the Police Commissioner, Ahmedabad City, Ahmedabad against the petitioner under section 3(1) of the PASA Act is hereby ordered to be quashed and set aside. The petitioner Raju @ Raju Gendi Rupchand Krishnani Sindhi is ordered to be set at liberty forthwith, if he is not required to be detained in custody for any other purpose. Rule is made absolute.

(J.R.Vora.J)

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